

DRAFT- TMDL Baseline Issues Relating to Water Quality Trading:

1. **Defining what are surplus reductions to those required by the TMDL.** Load Allocations, while expressed as a set amount the category of sources are allowed to discharge in aggregate, are usually implemented by addressing the goal of how much is needed to be reduced from current loads. Similarly, some implementation plans identify the specific BMPs that each NPS would need to implement to achieve that reduction. That creates challenges for water quality trading in that there is no fixed line or quantity for an individual source of what is needed from which to identify the tradable reduction – i.e., what is surplus to the reduction required by the TMDL.
2. **Defining what is an individual nonpoint source's share of the Load Allocation or reduction required by the TMDL for their source category.** A Load Allocation is assigned to a category of sources, which makes it challenging to determine what an individual nonpoint sources' share of that allocation should be. Similarly, since the allocation is implemented by addressing the reduction needed from the source category, it is not clear what amount the individual source needs to reduce to meet their portion of the Load Allocation requirements, and then to be able to determine what is surplus to that reduction and therefore available to sell as a credit.
3. **Addressing the relationship between "regulatory baseline" and "TMDL baseline" in TMDLs.** Nonpoint source reduction obligations as expressed in a TMDL are only enforceable to the extent the sources are required to make reductions or implement specific practices as required under state or local laws, or as a condition of federal grant or contract funding. Although EPA's water quality trading policy states that the Load Allocation is the baseline for establishing a credit, it is not clear if that baseline is at the level enforceable by the regulations and grant conditions, or where the level of reduction sought by the TMDL that may or may not be implemented in the absence of trading.
4. **Defining the timeline expected for achieving nonpoint source reductions required by the TMDL.** Waste Load Allocations can be translated into permit limits for point sources according to the state's permit compliance schedule practices or policy, but nonpoint source Load Allocations are only achieved by what is actually accomplished under the TMDL Implementation Plan. TMDLs themselves do not set a timeline for implementation, but instead use the Reasonable Assurance section to address the likelihood of the reductions being achieved expected under the Load Allocation. Water quality trading can help speed up the implementation of the Load Allocation but it is not clear if the achievement of reductions earlier than would be expected without trading is "surplus" and therefore a tradable credit. If so, then another issue is if the credit would need to be limited in its duration to indicate that the nonpoint sources are expected to implement the Load Allocation. It is important to consider the degree this credit limitation would discourage nonpoint sources from participating in trading altogether, which would mean the Load Allocation would only be achieved to the extent the Implementation Plan is successful.

5. **Defining the sequence of TMDL implementation obligations.** EPA's Water Quality Trading Policy states that the Load Allocation is the baseline and is often interpreted to mean that the Load Allocation must be achieved before a credit can be generated from a reduction that exceeds a nonpoint source's share of the Load Allocation. However, another interpretation was accepted in the Lower Boise trading framework developed by Region 10 and Idaho DEQ, which said that a portion of the reduction achieved by a BMP could be retired to represent that nonpoint source's share of the Load Allocation and with the remaining amount considered surplus and available to sell as a credit. A related issue is whether or not the entire Load Allocation must be achieved before trading can be implemented, or if individual sources can participate in trading if they are in compliance with any applicable state and local regulations and federal grant or contract requirements, and whatever else is specified to meet their Load Allocation obligations.
6. **Identifying the point in time that nonpoint source reductions are seen as helping meet the Load Allocation.** The TMDL specifies the year from which the overall reduction amounts are calculated, but it is not clear if that is also the starting point from which nonpoint source actions are counted.